

BEFORE THE BOARD OF NURSING

IN RE:

MARY EILEEN NEARY, R.N.

ORDER

Pursuant to §§ 2.2-4020, 54.1-110 and 54.1-2400(11) of the Code of Virginia (1950), as amended ("Code"), a formal administrative hearing was held before a panel of the Board of Nursing ("Board") on January 26, 2011, in Henrico County, Virginia, to inquire into evidence that Mary E. Neary, R.N., may have violated certain laws and regulations governing professional nursing practice in Virginia and to inquire into evidence that Ms. Neary may have violated certain terms and conditions imposed on her, as set forth in the Order of the Board entered on February 10, 2009. The case was presented by David W. Kazzie, Adjudication Specialist, Administrative Proceedings Division. Rachel Baer, Assistant Attorney General, was present as legal counsel for the Board. Ms. Neary was present and was represented by Pamela Branch, Esquire. The proceedings were recorded by a certified court reporter.

Upon consideration of the evidence presented, the Board adopted the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Mary Eileen Neary, R.N., was issued License No. 0001-133648 to practice professional nursing in the Commonwealth of Virginia on September 14, 1993. Said license is scheduled to expire on May 31, 2012. Ms. Neary's primary state of residence is Virginia. By Order dated February 10, 2009 ("Board's Order"), Ms. Neary is currently on probation with terms, in connection with two incidents related to standards of care that occurred in Texas in 2007.

2. On February 4, 2010, the Campbell County, Virginia, Juvenile & Domestic Relations District Court entered a Preliminary Child Protective Order, which ordered the parents of Patient A, a four-month-old

patient with a non-accidental traumatic brain injury, “to refrain from any unsupervised contact with the child” and that the “supervisor [was] to be designated by DSS.”

3. Patient A was re-admitted to the University of Virginia (UVA) Pediatric Intensive Care Unit (PICU) on the afternoon of February 15, 2010.

4. At 12:30 p.m. on February 15, 2010, a UVA social worker noted in Patient A’s medical record that “dad and mother can only visit when supervised by aunt and uncle.” At 2:00 p.m., that social worker noted in Patient A’s medical record that “patient is in custody of CPS [Child Protective Services] until investigation is completed ... patient’s parents may visit if supervised but not together... great aunt and her husband have been designated as foster care placement and may supervise visitation of patient.” The social worker also verbally advised Patient A’s nurse about the visitation restriction.

5. At the end of the 7:00 a.m. - 7:00 p.m. shift on February 15, 2010, Patient A’s nurse advised Ms. Neary, who was assuming care of Patient A, about the visitation restriction.

6. Ms. Neary allowed Patient A’s father to stay in the room all night, unattended, after being informed by the outgoing nurse that Patient A’s parents could not visit unless supervised. Further, by her own admission, Ms. Neary did not read Patient A’s medical record, which specified the parents’ visitation restrictions. Contrary to PICU policy, Ms. Neary gave Patient A’s father a “care partner” armband, which provided him with additional hospital access.

7. Ms. Neary’s employment with UVA was terminated, on February 24, 2010, as a result of the incident referenced in Finding of Fact No. 6.

8. On both her July 11, 2008 online application for employment with UVA and the resume that she submitted, Ms. Neary failed to disclose her prior employment with American Mobile Travel Nurse Agency and Hospice of Virginia and her reasons for leaving those positions.

9. Ms. Neary failed to notify the Board in writing within ten days of her February 24, 2010 termination from UVA, as required by Term 1(b) of the Board’s Order. Ms. Neary’s attorney notified the

Board of Ms. Neary's termination on March 17, 2010, and Ms. Neary reported the termination on her self-report to the Board via fax on March 25, 2010.

10. Ms. Neary failed to return all copies of her professional license to the Board by February 20, 2009, as required by Term 1(h) of the Board's Order.

CONCLUSIONS OF LAW

The Board concludes that:

1. Finding of Fact No. 6 constitutes a violation of § 54.1-3007(2), (5), and (8) of the Code, 18 VAC 90-20-300(A)(2)(f) of the Regulations Governing the Practice of Nursing ("Regulations") and Term No. 1(i) of the Board's February 10, 2009, Consent Order affecting Ms. Neary's license to practice professional nursing in the Commonwealth ("Board's Order").

2. Finding of Fact No. 8 constitutes a violation of § 54.1-3007(2) of the Code and 18 VAC 90-20-300(A)(2)(e) of the Regulations.

3. Finding of Fact No. 9 constitutes a violation of Term No. 1(b) of the Board's Order.

4. Finding of Fact No. 10 constitutes a violation of Term No. 1(h) of the Board's Order.

ORDER

WHEREFORE, the Virginia Board of Nursing, effective upon entry of this Order, hereby ORDERS as follows:

1. Mary Eileen Neary, R.N., is hereby REPRIMANDED.

2. Mary Eileen Neary, R.N., is hereby continued on PROBATION subject to the following terms and conditions:

a. The current period of probation required by the Board's Order shall be extended for an additional two years of active employment as a professional nurse. The license shall be reinstated without restriction at the completion of the probationary period without a hearing unless there is a pending investigation or unresolved allegation involving a violation of law, regulation or any term or condition of probation. In that

event, the period of probation shall be continued indefinitely or until such time as the Board makes a case decision in accordance with the Administrative Process Act, § 2.2-4000 et seq. and § 54.1-2400(9) et seq. of the Code of Virginia (1950), as amended (“Code”).

b. Ms. Neary shall inform the Board in writing within ten days of the date she begins professional nursing practice, or changes employment, or if any interruption in professional nursing practice occurs. Additionally, Ms. Neary shall provide the name and address of each employer to the Board.

c. Ms. Neary shall inform her current nursing employer and each future nursing employer that the Board has placed her on probation and shall provide each employer with a complete copy of this Order. If Ms. Neary is employed through a staffing agency, she shall inform her supervisor in each facility where assigned that she/he is on probation.

d. Performance Evaluations shall be provided, at the direction of Ms. Neary, by all nursing employers, as provided by the Compliance Division. The first report must be received in the Board office no later than 60 days from the date this Order is entered. Subsequent reports must be received quarterly by the last day of the months of March, June, September and December until the period of probation ends.

e. Ms. Neary shall practice nursing only in a supervised employment setting satisfactory to the Board for the entire period of probation. This employment setting shall provide on-site supervision by a professional nurse, who works the same shift, on the same unit, and is immediately available to provide assistance and intervention, and holds an unrestricted license. For all current nursing employment, and before beginning or changing nursing employment during this period, Ms. Neary shall have current and all prospective employers provide a written description of the employment setting to the Board office for approval.

f. Ms. Neary shall provide evidence that she has completed the following NCSBN online courses within 60 days of entry of the Order: Documentation: A Critical Aspect of Client Care and Professional Accountability & Legal Liability for Nurses.

g. Ms. Neary shall provide all current and future treating practitioners with a complete copy of this Order and shall execute an Authorization for Disclosure of Information form providing for unrestricted communication between the Board and any court-appointed probation or parole officers and any consultants designated by the Board.

h. Ms. Neary shall submit quarterly "Self-Reports" which include a current address, telephone number, and verification of all current employment. These reports shall also include any changes in employment status. The first report must be received in the Board office no later than 60 days from the date this Order is entered. Subsequent reports must be received quarterly by the last day of the months of March, June, September and December until the period of probation ends.

i. If not already done so, Ms. Neary shall return all copies of her license to practice as a professional nurse to the Board office within ten days of the date of entry of this Order along with a payment of a fee of \$5.00. Upon receipt, the Board shall issue a new license marked "Valid in Virginia Only; Probation with Terms."

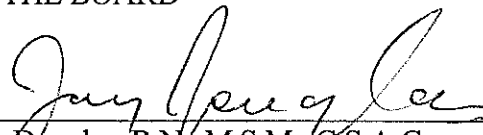
j. Ms. Neary shall conduct herself as a professional nurse in compliance with the requirements of Title 54.1, Chapter 30 of the Code, and the Board of Nursing Regulations.

k. Any violation of the terms and conditions stated in this Order shall be reason for revoking the license of Ms. Neary, and an administrative proceeding shall be held to decide whether her license shall be revoked.

3. This Order shall be applicable to Ms. Neary's multistate licensure privileges, if any, to practice professional nursing in the Commonwealth of Virginia. It is further ordered that for the duration of this Order, Ms. Neary may not work outside of the Commonwealth of Virginia pursuant to a multistate licensure privilege without the written permission of the Virginia Board of Nursing and the Board of Nursing in the party state where she wishes to work.

Pursuant to §§ 2.2-4023 and 54.1-2400.2 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as public record and shall be made available for public inspection or copying on request.

FOR THE BOARD



Jay P. Douglas, R.N., M.S.M., C.S.A.C.
Executive Director
Virginia Board of Nursing

March 2nd, 2011

ENTERED

NOTICE OF RIGHT TO APPEAL

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have 30 days from the date you are served with this Order in which to appeal this decision by filing a Notice of Appeal with Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233. The service date shall be defined as the date you actually received this decision or the date it was mailed to you, whichever occurred first. In the event this decision is served upon you by mail, three days are added to that period.